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10 Attorneys for Creditor
 AMTRUST BANK

12 UNITED STATES BANKRUPTCY COURT
 13 DISTRICT OF NEVADA, LAS VEGAS DIVISION

14 In re
 15 USA COMMERCIAL MORTGAGE
 COMPANY,
 16 Debtor.

Case No. BK-S-06-10725-LBR
 Case No. BK-S-06-10726-LBR
 Case No. BK-S-06-10727-LBR
 Case No. BK-S-06-10728-LBR
 Case No. BK-S-06-10729-LBR

Chapter 11

18 USA CAPITAL REALTY ADVISORS, LLC,
 19 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

**DECLARATION OF MICHAEL ATTIAS IN
 SUPPORT OF MOTION FOR RELIEF
 FROM THE AUTOMATIC STAY**

20 USA CAPITAL DIVERSIFIED TRUST DEED
 21 FUND, LLC,
 22 Debtor.

Date: November 13, 2009
 Time: 9:30 a.m.
 Place: Courtroom 1
 Foley Federal Building
 300 Las Vegas Blvd., South
 Las Vegas, Nevada

23 USA CAPITAL FIRST TRUST DEED FUND,
 24 LLC,
 25 Debtor.

26 USA SECURITIES, LLC,
 27 Debtor.
 28

1 AFFECTS:

- 2 X All Debtors
 3 USA Commercial Mortgage Company
 4 USA Capital Realty Advisors, LLC
 USA Capital Diversified Trust Deed
 Fund, LLC
 USA Securities, LLC.

5
 6 I, Michael Attias, declare as follows:

7 1. I am the Senior Vice President of AmTrust Bank ("AmTrust") and am the person
 8 primarily responsible for overseeing AmTrust's loan operations with respect to its loan with Ashby
 9 USA, LLC ("Ashby").

10 2. I am personally knowledgeable concerning AmTrust's documents, books, and
 11 records (collectively, the "Records") regarding AmTrust's loan to Ashby and related transactions
 12 with Ashby. The electronic copies of Records referred to and/or attached as exhibits to this
 13 declaration are in AmTrust's possession, custody, or control. The Records were made by AmTrust
 14 in the ordinary and regular course of AmTrust's business at or near the time of the act, condition,
 15 or event of which they are a record, and made by persons who have a business duty to AmTrust to
 16 make such Records.

17 3. By virtue of my position as Senior Vice President of AmTrust, my responsibility
 18 for AmTrust's loan to Ashby, AmTrust's custodianship of the Records, and based upon my own
 19 personal knowledge, I have personal knowledge regarding AmTrust's transactions with Ashby and
 20 the Debtor,¹ and of the facts set forth in this declaration. If called as a witness in this matter, I
 21 could and would competently testify to the facts set forth below under oath.

22 **A. The Loan Agreement and Notes**

23 4. AmTrust, which changed its name from Ohio Savings Bank, a federal savings
 24 bank, as lender, and Ashby, as borrower, are parties to a Loan Agreement dated as of August 29,
 25 2005 (as modified, the "Loan Agreement"). A true and correct copy of the Loan Agreement is
 26 attached hereto as Exhibit "1". In connection with the Loan Agreement, Ashby executed two
 27

28 ¹ Terms that are not defined herein are as defined in AmTrust's Motion for Relief from the Automatic Stay filed concurrently herewith.

1 promissory notes in favor of AmTrust: (i) a Revolving Deed of Trust Note (Land Loan)
 2 (Roripaugh Ranch), dated as of August 29, 2005, in the amount of \$106,500,000 (the "Revolving
 3 Note"); and (ii) a Deed of Trust Note (Letter of Credit), dated August 29, 2005 (the "LC Note,"
 4 and collectively with the Revolving Note, the "Notes"). True and correct copies of the Notes are
 5 collectively attached hereto as Exhibit "2".

6 **B. The Security Documents**

7 5. To secure Ashby's obligations under the Loan Agreement and the Notes, Ashby
 8 executed, among other documents and instruments, the following documents in favor of AmTrust:
 9 (i) a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing,
 10 dated as of August 29, 2005, encumbering the Property (the "DOT"); (ii) an Assignment of Rents
 11 and Leases and Agreements Affecting Real Estate, dated as of August 29, 2005 (the
 12 "Assignment"); and (iii) a Security Agreement Pledge, dated as of August 29, 2005 (the "Pledge
 13 Agreement," and collectively with the DOT and the Assignment, the "Security Documents"). On
 14 September 2, 2005, the DOT and Assignment were recorded in the official records of the County
 15 of Riverside, California (the "Official Records"). True and correct copies of the recorded DOT,
 16 the recorded Assignment, and the Pledge Agreement are attached hereto as Exhibits "3", "4", and
 17 "5", respectively. A UCC-1 financing statement perfecting AmTrust's security interest granted
 18 under the Pledge Agreement was filed with the California Secretary of State's Office on
 19 September 26, 2005 (the "UCC-1"). A true and correct copy of the UCC-1 is attached hereto as
 20 Exhibit "6".

21 **C. The Loan Modification**

22 6. AmTrust and Ashby entered into that certain Modification Agreement (Land Loan
 23 and Unit Construction Revolving Loan) (Roripaugh Ranch), dated February 14, 2006 (the
 24 "Modification"). A true and correct copy of the Modification is attached hereto as Exhibit "7". In
 25 connection with the Modification, Ashby executed a Replacement Deed of Trust Note (Letter of
 26 Credit) (Roripaugh Ranch), dated February 14, 2006, in favor of AmTrust (the "Modification
 27 Note"). A true and correct copy of the Modification Note is attached hereto as Exhibit "8". To
 28 secure the obligations owed to AmTrust under the Modification and the Modification Note, Ashby

1 executed a Modification of Construction Deed of Trust and Assignment of Rents (Land Loan and
 2 Revolving Loan) (the "Modified DOT"), dated February 14, 2006. The Modified DOT was
 3 recorded in the Official Records on March 3, 2006. A true and correct copy of the Modified DOT
 4 is attached hereto as Exhibit "9".

5 **D. The Loan Fully Matured in August 2007 and Remains Unpaid**

6 7. Ashby defaulted under the Loan Agreement and Revolving Note on June 30, 2006,
 7 by failing to make certain principal payments. This default and others remain uncured.² Under
 8 the terms of the Revolving Note and Loan Agreement, the Revolving Note fully matured as of
 9 August 29, 2007. Ashby failed to pay off the amounts due and owing under the Loan Agreement
 10 and Revolving Note upon the maturity date. The full amount of the Revolving Note remains due
 11 and owing at present.³ Further, AmTrust has made and continues to make payments for, among
 12 other things, taxes, insurance and erosion control in order to protect its interest in the Property.

13 8. As of October 20, 2009, Ashby currently owes AmTrust approximately
 14 \$133,686,483.82 under the Revolving Note and Loan Agreement, and interest continues to accrue
 15 at a per diem rate of approximately \$33,622.83.

16 **E. The Current Status of the Project**

17 9. AmTrust obtained an Appraisal of the Project in June 2008. AmTrust has
 18 monitored the progress of the Project since its inception. As it currently stands, the Project is not
 19 in "blue-top" condition, and the Property has not been improved since AmTrust obtained the
 20 Appraisal.

21 I declare under penalty of perjury under the laws of the United States of America that the
 22 foregoing is true and correct.

23 Executed this 1st day of October 2009, at Cleveland, Ohio.

24
 25 
 26 MICHAEL ATTIAS

27 ² The loan defaults are documented in correspondence and notices between the parties.
 28 AmTrust reserves its rights with respect to any and all defaults under the Loan Agreement and
 related documents, and nothing herein should be construed as a waiver of such rights.
 29 ³ The LC Note, as modified, has been satisfied.